

May 7, 2015

Docket Operations, M-30
U.S. Department of Transportation
1200 New Jersey Street, SE
Room W12-140
West Building Ground Floor
Washington, DC 20590-0001

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RE: DOCKET FAA-2014-1073; NOTICE OF PROPOSED RULEMAKING SLOT MANAGEMENT AND TRANSPARENCY FOR LAGUARDIA AIRPORT, JOHN F. KENNEDY INTERNATIONAL AIRPORT, AND NEWARK LIBERTY INTERNATIONAL AIRPORT

Introduction

NATA represents a broad array of aviation service businesses essential to a vibrant general aviation sector. Our member companies provide fuel, on-demand air charter, aircraft rental, storage, flight training, aircraft maintenance, parts sales, line support, airline baggage handling services as well as business aircraft and fractional ownership fleet management. NATA members range in size from large companies with international presence to smaller, single-location operators that depend exclusively on general aviation for their livelihood.

We provide the following comments on behalf of NATA members impacted by this Notice of Proposed Rulemaking (NPRM). This rule, if adopted, will negatively impact NATA members offering Part 135 on-demand air charter services (e.g. passenger, cargo and air ambulance operations), fractional aircraft program managers, and FBOs providing fuel and handling services at the impacted airports.

Public Meeting

On February 16, 2015 NATA requested a public meeting to discuss concerns about this rule. The rulemaking docket contains similar requests to extend the comment period and/or hold a public meeting. While the FAA did provide an additional thirty days to submit comments, NATA believes that the extensive interest and concern generated by the proposal are sufficient justification for the agency to provide additional opportunities for engagement.

Slots Not Necessary

NATA does not believe the FAA has justified a need to limit unscheduled slots into these airports by any quantifiable demonstration that such operations are a causal factor of congestion or significant delays. In fact, the FAA acknowledges that unscheduled operations are not currently a significant factor in congestion and anticipates that in the future NextGen and other airspace improvements will yield benefits in the New York area. While NATA acknowledges the agency's need to manage operations in complex airspace and recognizes the difficulty in establishing equitable access to scarce resources, our review of the NPRM has concluded that it is unnecessary to require slots for unscheduled operations at these airports.

The FAA states that it rejected extending the existing Orders because of the desire to "increase competition by making slots available to more operators." (80 FR 1297) Though the agency's goal is increasing airport accessibility, the proposed rule has the opposite impact on unscheduled operators. We note that the FAA is maintaining the overall number of scheduled hourly slots (e.g. 81/hr. at JFK) but, through additional measures in the NPRM, intends to increase the actual utilization for scheduled carriers. However, the proposal only acts to restrict and likely reduce the level of activity for unscheduled operations. The NPRM also provides no means to ensure the slots allocated to unscheduled operations are fairly available to all users.

The unscheduled operations in question remain at a relatively low number due to the preference for using other general aviation airports when feasible. The aircraft utilizing LGA, EWR and JFK usually have a specific reason for doing so and those users will be significantly impacted by slot restrictions. For example, our members report that the reason most often given by customers using these airports is the ability to connect to/from a scheduled air carrier flight (generally international) at that facility. The NPRM makes general assertions that some flights will divert to the other area airports, but the FAA has provided no information to indicate that it has thoroughly examined the nature of the demand at JFK, LGA and EWR and what impact this proposal will have on that demand.

In point of fact, the data used by the FAA to reach the proposed unscheduled slot allocation numbers is not current and should not be relied upon to impose restrictions. The FAA only reviewed data from 2008-2010. When the FAA seeks to establish a new and highly restrictive requirement, it must use current data to ensure it has adequately evaluated the full impact. While unscheduled operations are not a causal factor of congestion or delays, information provided by FBOs servicing those airports suggests the current level of unscheduled activity is higher than the proposed slot allocation. The FAA states that the proposed operational limits "generally correlate to actual hourly unscheduled operations" (80 FR 1294) demonstrating awareness that current activity is not a factor in congestion. Therefore, if it is the FAA's decision to impose slots with an understanding that the slot allocation represents actual use, the numbers must be determined using current data.

As a concession to permit additional operations beyond the slot limit, the NPRM notes that, “[t]o the extent possible, ATC would permit additional operations,” most often if there are favorable weather conditions (80 FR 1294). While the objective is laudable, it will not have an appreciable impact on operations. As noted above, demand for LGA, EWR and JFK is typically airport-specific and not a general need to “get to the New York area.” The vague possibility that good weather might allow an arrival at a slot-controlled airport is not helpful. Further, it is unclear how an operator would determine whether ATC was willing to permit these additional operations and how far in advance these opportunities would become known.

Recommend Baseline Monitoring Program

A review of the data the FAA has provided indicates that unscheduled users are already self-limiting their use of these airports. The fact that JFK and EWR are not currently slot restricted, but demand for unscheduled operations have remained relatively low, demonstrates that the current system is working as intended and slots are unnecessary. However, NATA understands the importance of preventing unscheduled operations from increasing to the point that they negatively impact congestion and cause delays.

As an alternative to the proposed slot restrictions, NATA suggests operational baselines be established and monitored by the FAA. Should unscheduled operations exceed such baselines by a defined amount, FAA will work with industry to develop and implement appropriate mitigations thus preventing unchecked operational growth in excess of capacity. This proposal satisfies the stated goal of maintaining the current level of unscheduled operations without the additional workload and costs associated with implementing a slot system. Under such a construct, all consumers will continue to enjoy equal opportunities for access.

e-CVRS Concerns

NATA also believes it is critical to address shortcomings in the current slot reservation system, the Enhanced Computer Voice Reservation System (e-CVRS). A review of e-CVRS and implementation of improvements should occur regardless of how or if the FAA imposes unscheduled slots in a final rule.

It is our view that the issues surrounding e-CVRS are complex and improvements to the system are best accomplished in policy changes developed with industry stakeholder input, rather than by rulemaking.

Presently there is no penalty if a reserved slot is unused. Proposed § 93.49 (i) states that a slot “. . . must be cancelled if it will not be used as assigned.” NATA agrees with the premise of this statement, but finds the proposed regulation to be lacking in clarity. The FAA has provided no guidance on how it intends for this provision to apply or how it would deem an operator non-compliant for the purposes of potential enforcement action. We also point out that any penalty

for non-use of slots will apply only to JFK, EWR and LGA slots and not to any other locations where e-CVRS is utilized.

Unscheduled operations are by definition ad hoc. The customer need that creates a slot reservation can suddenly change causing a flight's rescheduling or its outright cancellation. This is the nature of the industry and operators should not face enforcement action in such cases. However, the current system also leaves open the possibility that an aircraft operator can reserve numerous slots in anticipation of demand that *might* materialize and thereby eliminate opportunities for other potential users with *actual* demand. Today, there is no penalty for failure to cancel those reservations.

Under proposed § 93.49 (i) an operator engaging in such practices could avoid a compliance issue by cancelling the reservations. Absent any clear policy on how far in advance a slot cancellation must be received, this hypothetical operator could feasibly cancel slots immediately prior to the reservation time, averting enforcement action while making them unusable to another operator.

To resolve these problems, NATA requests the FAA engage in a collaborative process to identify industry concerns with e-CVRS and suggest policy changes to improve it that accomplishes the following goals:

1. Define habitual non-use;
2. Define a suggested reasonable cancellation period that would allow users to avoid being labeled a habitual non-user;
3. Establish penalties for such habitual non-users; and
4. Identify other user concerns with e-CVRS.

The FAA did not conduct, or if it did it did not report on, any analysis of e-CVRS functioning at LGA. Understanding how the system has functioned at LGA would offer meaningful insight on how it would impact JFK and EWR and also aid in understanding the actual demand at LGA. It is surprising that no review of the existing system for unscheduled slot allocation was conducted in the years since slots were imposed at LGA in preparation for this NPRM. Prior to imposing any new, permanent slot restrictions on unscheduled operations, NATA requests the FAA review available e-CVRS data from LGA to determine the following regarding unscheduled slot usage:

1. What percentage of slots has gone un-reserved at LGA?
2. What percentage of slots are reserved and not cancelled, but also not used?
3. For slots that are reserved and later cancelled, on average how long before the slot time does the cancellation occur?

4. Is it possible that booked, but unused/not cancelled slots are giving a false perception that there isn't as much demand as actually exists for LGA?
5. Who is typically using the unscheduled slots (i.e. public charters, on-demand carriers, fractional program aircraft, private general aviation)?

Rulemaking Concern

As a general matter, NATA objects to codifying slot allocations by rule. Specifying slot numbers in a regulation means that any future changes require rulemaking. Rulemaking is, by design, a time-intensive process and is subject to budgetary and human resource constraints. NATA's position is that overall slot numbers and their allocation should be based upon actual conditions and not contingent on the FAA's ability or desire to fund a rulemaking project. Public and industry stakeholders do not benefit from the lack of flexibility brought by a prescriptive regulatory limit.

For example, it seems unlikely to NATA that the FAA would dedicate the resources for a rulemaking to increase unscheduled slots by one per hour even if the data would support such a change. While a single slot may not initially seem significant, it represents 100% of the proposed unscheduled slot allocation for Newark Liberty International Airport (EWR), 50% of those proposed for John F. Kennedy International Airport (JFK) and 33% of the allotment for LaGuardia Airport (LGA). What process does the FAA intend to follow to determine when a change in slot allocations is significant enough to justify rulemaking? How often does the FAA intend to conduct a review of available data to determine if more slots are possible? How would the FAA decide whether this hypothetical slot would be allocated to scheduled or unscheduled operations? The FAA must be transparent with its intended decision-making system for awarding this scarce resource but no information is available on this matter in the NPRM or supplemental documents.

Competitive and Economic Analysis Incomplete

NATA also seeks additional information on how the FAA decided upon the ratio of unscheduled to scheduled slots as proposed. Did the FAA give any consideration to the fact that the airlines are competitors to Part 135 air carriers, public charters and fractional programs? Did the FAA only consider its analysis of current unscheduled use? Under what circumstances can the allocation ratio be shifted to permit more use by the unscheduled operators? Currently, scheduled and unscheduled operators are on an even footing. The NPRM's limits on unscheduled operations, coupled with the lack of additional information as to what circumstances could lead to additional slots for unscheduled operators, provides the scheduled carriers with a distinct advantage. The airlines have fixed, but guaranteed access allowing them to sell customers transportation and provide a guarantee (barring unforeseen events) of

departure availability far in advance. The on-demand carrier competing for that same client can't offer a guarantee of access at all.

Favoring one type of carrier over another without considering the impact is inappropriate. The FAA should not choose winners and losers in this process and therefore must consider the impact of establishing in regulation a fixed-level of competition. The NPRM details the circumstances under which a slot held by a scheduled carrier may revert back to the FAA or be sold or leased to other carriers. However the FAA offered no insight into how slots could reasonably be reallocated to unscheduled operations. NATA requests the FAA clearly explain its reasons for not considering the competitive issues created by requiring unscheduled slots where they are not currently required.

Finally, the Initial Regulatory Evaluation conducted for this rule is incomplete and must be corrected prior to taking additional actions. Specifically, the FAA has omitted both members of the traveling public and airport based-businesses from its evaluations. The evaluation notes that passengers of scheduled flights are among the impacted, but fails to include passengers of unscheduled flights. The negative impacts felt by these passengers should be quantified and incorporated into the cost-benefit analysis. Equally important is the omission of fixed base operators (FBOs) at the subject airports. These businesses provide fueling, handling and other services to aircraft operators impacted by the proposed slot requirements. The devaluation of their businesses and potential job losses deserve thoughtful consideration by the FAA.

Air Ambulance Operations

Any final rule imposing slots on unscheduled operations must include an exception for air ambulance operations. While helicopter operations are not subject to the proposed slot requirements, there are numerous fixed-wing medical transport and organ donation flights that occur at EWR, JFK and LGA.

It appears that these critical flights were not identified or analyzed and the NPRM offers no accommodation for their operations. Medical transportation flights are generally arranged on relatively short notice. Attempting to obtain a slot (and quite possibly failing in that effort) is an unnecessary hurdle for this essential service. The FAA must include an exception to permit aircraft positioning to or departing from JFK, EWR and LGA for air medical purposes to do so without a slot reservation.

Operational and Safety Implications

The NPRM does not identify any negative safety consequences to restricting unscheduled operations, but NATA believes there are issues the FAA must consider. For example, when LGA arrivals use the ILS approach to Runway 13, Teterboro (TEB) airport is effectively shut down. In such cases inbound aircraft to TEB may consider LGA, JFK or EWR reasonable

alternatives, but due to slot restrictions are unlikely to be accommodated. When the weather deteriorates, having the increased runway length, facilities and emergency response capabilities at LGA, EWR and JFK is essential for many general aviation aircraft operators. The potential unintended consequences to imposing slots on unscheduled operations require careful review by the FAA.

In closing, NATA appreciates the agency's consideration of our views. The fact that JFK and EWR are not currently slot restricted, but demand for unscheduled operations remains relatively low, demonstrates that the current system is working as intended and slots are unnecessary. NATA strongly encourages the FAA to engage in a dialogue with the general aviation industry stakeholders to develop reasonable actions aircraft operators can take to aid in mitigating congestion concerns now and in the future. NATA and its members stand ready to assist the FAA in these areas.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas L. Hendricks". The signature is fluid and cursive, with a large initial "T" and "H".

Thomas L. Hendricks
President and CEO